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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,843	01/19/2001	John J. Emerick JR.	7440/4	9252

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EXAMINER	
JACKSON, JAKIEDA R	
ART UNIT	**PAPER NUMBER**
2655	

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/765,843	**Applicant(s)** EMERICK, JOHN J.	
	Examiner Jakieda R Jackson	**Art Unit** 2655	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-10 and 12-17*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

DAVID L. OMETZ
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the combination of Van Ryzin and Fukuda in combination does not warrant this obviousness rejection of claims 1-5, 14 and 17, because there must be some suggestion or motivation, in Van Ryzin and/or Fukuda or in the knowledge generally available to one of the ordinary skill in the art, to modify Van Ryzin in view of Fukuda. Applicant argues that the teaching or suggestion to modify Van Ryzin in view of Fukuda must be found in the prior art Van Ryzin and Fukuda, not in the disclosure of the present application. In particular, applicant points out that there is no suggestion or motivation to modify Van Ryzin in view of Fukuda whereby Van Ryzin includes a digital signal processor "for receiving a first data signal from the external source and for decoding the first data signal to obtain the audio data file" and a programmable controller for activating an alaram sound coded in the audio data file in response to the programmable controller determining that the alarm sound is required to fulfill one or more programming instruction executed by the programmable controller" as recited in independent claim 1.

However, the examiner disagrees. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Office Action mailed 3/2/2005, pages 4-5, Fukuda discloses receivng a data signal from the external source (figure 2, element 19 with column 9, lines 57-65) and for decoding (figure 2, element 21) the received data signal, to obtain the audio data file (column 9, line 66 - column 10, line 19). The use of a DSP in figures 2, 3 or 4 is disclosed which will prevent deterioration of the quality of music data/original sound data, which can be found in Fukuda (column 21, lines 27-45), similar to the DSP in Van Ryzin that is used in processing transmitted information signal, found in Van Ryzin (column 2, lines 37-60).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Van Ryzin's alarm clock such that it obtains audio sounds from an external source, as taught by Fukuda, to enable music to be downloaded to a medium, while protecting the copyright and preventing deterioration of sound quality, thereby providing vastly greater selectivity of sound data (column 21, lines 16-45 with column 23, lines 18-32).

Applicant also argues that neither Van Ryzin nor Fukuda teach a DSP capable of decoding an audio file from a TV broadcast signal. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a DSP capable of decoding an audio file from a TV broadcast signal) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As mentioned previously , Fukuda discloses receivng a data signal from the external source (figure 2, element 19 with column 9, lines 57-65) and for decoding (figure 2, element 21) the received data signal, to obtain the audio data file (column 9, line 66 - column 10, line 19). The use of a DSP in figures 2, 3 or 4 is disclosed which will prevent deterioration of the quality of music data/original sound data, which can be found in Fukuda (column 21, lines 27-45), similar to the DSP in Van Ryzin that is used in processing transmitted information signal, found in Van Ryzin (column 2, lines 37-60), which reads on the claimed limitation of claim 1.

Applicant argues that the motivation asserted by the examiner is to provide a greater selectivity of sound data. However, applicant argues that Van Ryzin's teaches the use of sound card 22 as the means for providing the necessary sound data for holiday purposes and this there is no need to provide an even greater selectivity of sound data. The applicant asserts that having a greater selectivity of sound beyond that necessary for the principle operation of Van Ryzin in unnecessarily extravagent and excessive, and thus, there is no suggestion or motivation to modfy the combination of Van Ryzin in view of Fukuda.

However, that is not the only teaching of incoporating a DSP. In addition, Fukuda teaches that the use of a DSP in figures 2, 3 or 4 is disclosed which will prevent deterioration of the quality of music data/original sound data, which can be found in Fukuda (column 21, lines 27-45), similar to the DSP in Van Ryzin that is used in processing transmitted information signal, found in Van Ryzin (column 2, lines 37-60).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Van Ryzin's alarm clock such that it obtains audio sounds from an external source, as taught by Fukuda, to enable music to be downloaded to a medium, while protecting the copyright and preventing deterioration of sound quality, thereby providing vastly greater selectivity of sound data (column 21, lines 16-45 with column 23, lines 18-32).

Therefore, applicant's arguments filed May 2, 2005 have been fully considered, but are not persuasive.